

ACCESS TO CHILD WELFARE HEARINGS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill amends the Judicial Code.

Highlighted Provisions:

This bill:

< changes the date on which any person may be admitted to a child abuse, neglect, or dependency hearing in juvenile court from July 1, 2005 to July 1, 2004.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78-3a-115, as last amended by Chapter 332, Laws of Utah 2003

78-3a-115.1, as enacted by Chapter 332, Laws of Utah 2003

78-3a-116, as last amended by Chapter 332, Laws of Utah 2003

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78-3a-115** is amended to read:

78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's cases heard separately from adult cases -- Minor or parents or custodian heard separately -- Continuance of hearing -- Consolidation of proceedings involving more than one minor.

(1) Hearings in minor's cases shall be held before the court without a jury and may be

conducted in an informal manner.

(a) In abuse, neglect, and dependency cases in all districts other than pilot districts selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude all persons from hearings held prior to July 1, ~~[2005]~~ 2004 who do not have a direct interest in the proceedings.

(b) In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present. The court shall exclude all other persons except as provided in Subsection (1)(c).

(c) In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:

(i) the minor has been charged with an offense which would be a felony if committed by an adult; or

(ii) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult, and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.

(d) The victim of any act charged in a petition or information involving an offense committed by a minor which if committed by an adult would be a felony or a class A or class B misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77, Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not apply to important juvenile justice hearings as defined in Section 77-38-2.

(e) A victim, upon request to appropriate juvenile court personnel, shall have the right to inspect and duplicate juvenile court legal records that have not been expunged concerning:

(i) the scheduling of any court hearings on the petition;

(ii) any findings made by the court; and

(iii) any sentence or decree imposed by the court.

(2) Minor's cases shall be heard separately from adult cases. The minor or his parents or

custodian may be heard separately when considered necessary by the court. The hearing may be continued from time to time to a date specified by court order.

(3) When more than one minor is involved in a home situation which may be found to constitute neglect or dependency, or when more than one minor is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

Section 2. Section **78-3a-115.1** is amended to read:

78-3a-115.1. Access to abuse, neglect, and dependency hearings.

(1) This section applies:

(a) beginning November 1, 2003, to districts selected by the Judicial Council as pilot districts under Subsection 78-3-21(15)(a); and

(b) beginning July 1, ~~2005~~ 2004, to all other districts.

(2) (a) In abuse, neglect, and dependency cases the court shall admit any person to a hearing, including a hearing under Subsection 78-3a-320(3), unless the court makes a finding upon the record that the person's presence at the hearing would:

- (i) be detrimental to the best interest of a child who is a party to the proceeding;
- (ii) impair the fact-finding process; or
- (iii) be otherwise contrary to the interests of justice.

(b) The court may exclude a person from a hearing under Subsection (2)(a) on its own motion or by motion of a party to the proceeding.

Section 3. Section **78-3a-116** is amended to read:

78-3a-116. Hearings -- Record -- County attorney or district attorney responsibilities -- Attorney general responsibilities -- Admissibility of evidence.

(1) (a) A verbatim record of the proceedings shall be taken by an official court reporter or by means of a mechanical recording device in all cases that might result in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall also be made unless dispensed with by the court.

(b) (i) Notwithstanding any other provision, including Title 63, Chapter 2, Government

Records Access and Management Act, a record of a proceeding made under Subsection (1)(a) shall be released by the court to any person upon a finding on the record for good cause.

(ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the court shall:

(A) provide notice to all subjects of the record that a request for release of the record has been made; and

(B) allow sufficient time for the subjects of the record to respond before making a finding on the petition.

(iii) A record of a proceeding may not be released under this Subsection (1)(b) if the court's jurisdiction over the subjects of the proceeding ended more than 12 months prior to the request.

(iv) For purposes of this Subsection (1)(b):

(A) "record of a proceeding" does not include documentary materials of any type submitted to the court as part of the proceeding, including items submitted under Subsection (4)(a); and

(B) "subjects of the record" includes the child's guardian ad litem, the child's legal guardian, the Division of Child and Family Services, and any other party to the proceeding.

(v) This Subsection (1)(b) applies:

(A) to records of proceedings made on or after November 1, 2003 in districts selected by the Judicial Council as pilot districts under Subsection 78-3-21(15)(a); and

(B) to records of proceedings made on or after July 1, ~~2005~~ 2004 in all other districts.

(2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a prosecution district, the district attorney shall represent the state in any proceeding in a minor's case.

(b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and Family Services, and Title 78, Chapter 3a, Juvenile Courts, relating to:

(i) protection or custody of an abused, neglected, or dependent child; and

(ii) petitions for termination of parental rights.

(c) The attorney general shall represent the Division of Child and Family Services in actions involving minors who have not been adjudicated as abused or neglected, but who are otherwise committed to the custody of that division by the juvenile court, and who are classified in the division's management information system as having been placed in custody primarily on the basis of delinquent behavior or a status offense. Nothing in this Subsection (2)(c) may be construed to affect the responsibility of the county attorney or district attorney to represent the state in those matters, in accordance with the provisions of Subsection (2)(a).

(3) The board may adopt special rules of procedure to govern proceedings involving violations of traffic laws or ordinances, fish and game laws, and boating laws. However, proceedings involving offenses under Section 78-3a-506 are governed by that section regarding suspension of driving privileges.

(4) (a) For the purposes of determining proper disposition of the minor in dispositional hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and in hearings upon petitions for termination of parental rights, written reports and other material relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the person who wrote the report or prepared the material appear as a witness if the person is reasonably available.

(b) For the purpose of determining proper disposition of a minor alleged to be or adjudicated as abused, neglected, or dependent, dispositional reports prepared by Foster Care Citizen Review Boards pursuant to Section 78-3g-103 may be received in evidence and may be considered by the court along with other evidence. The court may require any person who participated in preparing the dispositional report to appear as a witness, if the person is reasonably available.

(5) For the purpose of establishing the fact of abuse, neglect, or dependency, the court may, in its discretion, consider evidence of statements made by a minor under eight years of age to a person in a trust relationship.